Office - Supreme Court, U.S.
FILED
NOV 23 1981
ALEXANDER L. STEVAS,
CLERK

No. 80-2150

In the Supreme Court of the United States

October Term, 1981

DONALD FINNEGAN, *et al.*,
Petitioners,

vs.

HAROLD D. LEU, *et al.*,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR PETITIONERS

SAMUEL G. BOLOTIN
(*Counsel of Record*)
BOLOTIN & BOLOTIN CO., L.P.A.
2nd Floor Gardner Building
506 Madison Avenue
Toledo, Ohio 43604
(419) 241-1900
Counsel for Petitioners

JACK GALLON
JEFFREY JULIUS
(*Counsel of Record*)
GALLON, KALNIZ & IORIO CO., L.P.A.
3161 North Republic Blvd.
Toledo, Ohio 43615
(419) 535-1976
Counsel for Respondents

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—TEL. (216) 621-5647

QUESTION PRESENTED

Were the Landrum-Griffin Freedom of Speech Political Rights of Fifteen (15) appointed business agents violated by the summary wholesale discharge of the business agents by the prevailing presidential candidate, Harold D. Leu, for their support of the opposition candidate, Omar L. Brown, in the 1977 officers' election for Teamsters Local 20?

LIST OF ALL PARTIES

The Petitioners are: Donald Finnegan, Bobby Haney, Ronald Bowman, Denver Phillips, William Tank, Richard Eddington, Charles Winters, and Edward Stricklin. The petitioners represent eight of the original fifteen business agents who were discharged by Harold D. Leu upon his defeat of Omar L. Brown during the 1977 Teamsters Local 20 Officers' Election.

The Plaintiffs in the Court below included the above-named petitioners as well as seven other business agents who were also summarily discharged for their political support of candidate Brown. The other Plaintiffs include Raymond Navarro, who renounced his political support for Brown and returned to work for Leu, James Root the vice president elected during the 1977 officers' election who has since died, Frank Howald who left the Teamster industry and took a job with management, and Harry Starkey (elected trustee), John Clark, Donald Jahns and Levernon Hubbard who have elected not to join in the petition for financial reasons.

Respondents are Harold D. Leu, and Teamsters, Chauffeurs, Warehousemen and Helpers of America Local Union #20 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

TABLE OF CONTENTS

QUESTION PRESENTED I
LIST OF ALL PARTIES II
OPINIONS BELOW 1
JURISDICTION 2
STATUTORY PROVISIONS INVOLVED 2
STATEMENT OF THE CASE 3
A. Facts 3
B. The Proceedings Below 8
SUMMARY OF ARGUMENT 10
ARGUMENT—
I. THE COURTS BELOW ERRED BY ADOPTING THE MINORITY LINE OF AUTHORITY AMONG A SPLIT IN THE CIRCUIT COURTS ON WHETHER UNION EMPLOYEES OR OFFICERS WHO ARE ALSO UNION MEMBERS HAVE A CAUSE OF ACTION UNDER THE LMRDA WHEN THEY ARE DISCHARGED IN RETALIATION FOR EXERCISING RIGHTS GUARANTEED THEM AS UNION MEMBERS 12
A. The Law 12
B. The Majority Theory 15
C. The Minority Authority—Theory and Distinctions 17
D. The Fallacy of *Wambles* 22
E. Leu's Bad Faith Motivation 27
F. The Discharge of Petitioners Was Designed to Interfere With Their Rights As Members 30
CONCLUSION 35

TABLE OF AUTHORITIES

Cases

Alvino v. Bakery Workers Union, 46 L.R.R.M. 2812 (D.D.C. 1960) 15, 35

Bakery & Confectionery Workers International Union v. Ratner, 335 F.2d 691, 56 L.R.R.M. 2432 (D.C. Cir., 1964) 15, 17, 35

Bradford v. Textile Workers, 563 F.2d 1138, 96 L.R.R.M. 2690 (4th Cir., 1977) 14, 28

Calhoun v. Harvey, 379 U.S. 134, 57 L.R.R.M. 2561 (1964) 17

Cooke v. Orange Belt District Council, 529 F.2d 815, 91 L.R.R.M. 2349 (9th Cir., 1976) 14, 15

DeCampli v. Greeley, 293 F. Supp. 746, 69 L.R.R.M. 2786 (D.N.J. 1968) 15, 16, 26

Gabauer v. Woodcock, 520 F.2d 1084, 89 L.R.R.M. 2961 (8th Cir., 1975), *cert. denied*, 423 U.S. 1061 (1976) 14, 15

George v. Bricklayers Union, 255 F. Supp. 239, 62 L.R.R.M. 2478 (E.D. Wisc. 1966) 15, 35

Grand Lodge v. King, 335 F.2d 340, 56 L.R.R.M. 2639 (9th Cir., 1959), *cert. denied*, 379 U.S. 920, 57 L.R.R.M. 2512 (1964) 14, 15, 16, 24, 26, 35

Kuebler v. Lithographers Local 24-P, 473 F.2d 359, 82 L.R.R.M. 2717 (6th Cir., 1973) 17

Lamb v. Miller, 107 L.R.R.M. 3064 (D.C. Cir., 1981) 15

Maceira v. Pagan, 649 F.2d 8 (1st Cir., 1981) 15

Marshall v. Teamsters Local 20, 611 F.2d 645, 103 L.R.R.M. 2111 (6th Cir., 1979) 5

Martire v. Laborers' Local Union 1058, 410 F.2d 32 (3d Cir.), *cert. denied*, 396 U.S. 903 (1969) 15, 17, 18, 21

Miller v. Holden, 535 F.2d 912, 95 L.R.R.M. 2152, 2155 (5th Cir., 1976) 16, 22, 28

Newman v. Local 1101, Communication Workers of America (Newman I), 570 F.2d 439 (2d Cir., 1978) 15, 17-18, 19, 20

Newman v. Local 1101, Communication Workers of America (Newman II), 597 F.2d 833, 101 L.R.R.M. 2265 (1979) 20, 21, 27

Price v. United Mine Workers, 376 F. Supp. 1015, 86 L.R.R.M. 2577, *aff'd without opinion*, 515 F.2d 1018, 90 L.R.R.M. 2844 (D.C. Cir., 1975) 15, 35

Retail Clerks Union, Local 648 v. Retail Clerks International Association, 299 F. Supp. 1012, 70 L.R.R.M. 3366 (D.D.C. 1969) 14-15, 16, 25, 26, 28, 35

Salzhandler v. Caputo, 316 F.2d 445, 52 L.R.R.M. 2908, 2910, 2911 (2d Cir., 1963) 16, 24

Sheridan v. United Bros. of Carpenters, 306 F.2d 152, 50 L.R.R.M. 2637 (3d Cir., 1962) 16, 18, 21, 22

Wambles v. International Brotherhood of Teamsters, etc., 488 F.2d 888 (5th Cir., 1974) 10, 15, 16, 18, 22, 23, 24, 27, 30

Wirtz v. Bottleblowers Assn., 389 U.S. 463, 67 L.R.R.M. 2129 (1968) 17

Wirtz v. Hotel Employees, 391 U.S. 492, 68 L.R.R.M. 2305 (1968) 17

Wood v. Dennis, 489 F.2d 849, 84 L.R.R.M. 2662 (7th Cir., 1972), *cert. denied*, 415 U.S. 960, 85 L.R.R.M. 2530 (1974) 14, 22, 25

Statutes

28 U.S.C.A. §1254(1) 2

29 U.S.C. 401 *et seq.* 12

Labor-Management Reporting and Disclosure Act of 1959:

§101(a)(1), 29 U.S.C.A. §411(a)(1) 2, 8, 10, 12, 14, 15, 16, 24, 26

§101(a)(2), 29 U.S.C.A. §411(a)(2) 2, 8, 10, 12, 14, 15, 16, 24, 26

§102, 29 U.S.C.A. §412 .....3, 10, 16, 17

§609, 29 U.S.C.A. §529 .....3, 8, 10, 13, 14, 15, 16, 17

Text

Summers, *Judicial Settlement of Internal Union Disputes*, BUFFALO LAW REVIEW, Vol. 7 at 423 25

No. 80-2150

In the Supreme Court of the United States

October Term, 1981

DONALD FINNEGAN, *et al.*,
Petitioners,

vs.

HAROLD D. LEU, *et al.*,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR PETITIONERS

OPINIONS BELOW

The opinion and order of the United States District Court for the Northern District of Ohio Western Division granting the Defendants' motion for summary judgment is reproduced in Petitioners' Appendix at pages A4-A9 and is reported at 469 F. Supp. 932. The opinion and order of the United States Court of Appeals for the Sixth Circuit affirming the judgment of the District Court is reproduced in Petitioners' Appendix at A1-A3 and is unreported.

JURISDICTION

The judgment of the Court of Appeals was entered on March 23, 1981 and issued as a mandate on or about June 11, 1981. The petitioners had originally attained an order staying the mandate for thirty (30) days on May 12, 1981, but did not seek to continue the stay of the mandate. The jurisdiction of this Court is invoked pursuant to 28 U.S.C.A. §1254(1).

STATUTORY PROVISIONS INVOLVED

29 U.S.C.A. §411(a)(1) and (2):

(a)(1) EQUAL RIGHTS—Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations, and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.

(2) FREEDOM OF SPEECH AND ASSEMBLY—Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meetings subject to the organization's established and reasonable rules pertaining to the conduct of meetings: Provided, that nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institu-

tion and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

29 U.S.C.A. §412:

Any person whose rights secured by the provisions of this subchapter have been infringed by any violation of this subchapter may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred or where the principal office of such labor organization is located.

29 U.S.C.A. §529:

It shall be unlawful for any labor organization, or any officer, agent, shop steward, or other representative of a labor organization, or any employee thereof to fine, suspend, expel, or otherwise discipline any of its members for exercising any right to which he is entitled under the provisions of this chapter. The provisions of Section 412 of this title shall be applicable in the enforcement of this section.

STATEMENT OF THE CASE

A. Facts

This suit was originally brought by fifteen (15) appointed business agents who were summarily discharged by Harold D. Leu the prevailing presidential candidate during the 1977 Teamsters Local 20 officers' election. Respondent Leu discharged the full time business agents as his first official act in office after his defeat of the opposi-

tional candidate Omar L. Brown in retaliation for the business agents' political support for Brown during the election. The discharged agents included James Root, elected as vice president, and Harry Starkey, elected as trustee (J.A. 16).

The facts giving rise to this appeal can be simply stated. Local 20 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America is a labor organization of some 12,500 members in Northwestern Ohio. From its inception some twenty-five years ago, it has had only four (4) presidents, one of whom served a term of nine months (R. 17-19; H.D.L. 30-40).[1]

The first seriously contested election for the officership of Local 20 was in December of 1974. The December 1974 election, which pitted a reform slate headed by Omar L. Brown against an essentially incumbent slate headed by Harold D. Leu found Leu the winner by some forty-odd votes. The election was set aside by the International Brotherhood of Teamsters pursuant to Brown's internal union appeal as a result, *inter alia*, of irregularities which occurred at the polling places. A panel from the International Teamsters Union conducted a second election in September of 1975 with the same two candidates against one another, only this time Omar L. Brown was the victor by over 500 votes (R. 19; H.D.L. 38). In a desperate attempt to throw the union into trusteeship all the incumbent business agents and officers under Leu resigned *en masse* upon Brown's victory[2] (H.D.L. 39). The attempt failed and Brown assumed office with a mixed group of

---

1. "R" refers to the hearing on preliminary injunctive relief held on January 17, 1978; "J.A." refers to the Joint Appendix, and "H.D.L." refers to the deposition of Harold D. Leu filed March 2, 1979.

2. In prior elections business agents were not summarily discharged (J.A. 13, 26).

experienced and inexperienced business agents (H.D.L. 39-40, 46-47).

December, 1977 brought the third election to Local 20 in less than three years with the same two candidates facing one another. The election was held on December 9, 1977 in Fremont, Ohio; on December 10th and 11th, 1977, in Toledo, Ohio; and on December 12, 1977 in Bryan, Ohio. Because of a blizzard which hit the Northwest Ohio area, the turnout for the election was very poor, especially on the first day of the election held in Fremont, Ohio. Fremont was essentially Brown country. From an eligible voting membership of over 12,500 members, slightly over 3,500 voters were able to make it to the polls to vote. Leu was declared the victor by 29 votes,[3] and the Brown slate filed another protest, complaining of union election violations including the fact that Leu had received thousands of dollars in campaign contributions from non-union employers within the jurisdiction of Local 20 in industries with shops under contract with the local union. The internal protest was investigated by the International Union and denied. Brown then filed a complaint with the Secretary of Labor.[4]

---

3. While Leu won the presidency by this slim margin, Leu's remaining slate was defeated and the members elected all Brown slate officers for the other union positions. *Marshall v. Teamsters Local 20*, 611 F.2d 645, 103 L.R.R.M. 2111 (6th Cir. 1979).

4. After an investigation, the Secretary of Labor determined that employer contributions had affected the outcome of the election and suit was brought in the District Court of the Northern District of Ohio. After a trial on the merits, the trial court agreed with the Secretary and ordered a rerun election under the supervision of the Secretary of Labor. The Local Union filed an expedited appeal to the Sixth Circuit, but the trial court's findings that Leu received employer funds were affirmed. *Marshall v. Teamsters Local 20*, 611 F.2d 645, 103 L.R.R.M. 2111 (6th Cir. 1979).

(Continued on following page)

Needless to say, campaigning on behalf of both slates in the December, 1977 election was vigorous (J.A. 9). Plaintiffs-Petitioners in this case were employed as business agents under the Brown administration, which held office from September, 1975 to December, 1977. Each of them was, at all material times mentioned herein, a member in good standing of Teamsters Local 20. It is undisputed that as business agents each was an *appointed* official of the union appointed pursuant to the Bylaws of the Local by the then President of Local 20, Omar Brown.

After Leu's victory was determined, he was sworn into office on Friday, December 30, 1977, late in the afternoon. The union offices were closed for the weekend, as well as on Monday, January 2, 1978, in celebration of the new year. On January 3, 1978, Leu's first official day in office, he called all of the Plaintiffs-Petitioners to a meeting and fired them wholesale, without notice, giving as his reason that they were "loyal to Brown and not to him" and that "he believed that they would not follow his policies and program to be implemented under his administration" (J.A. 12, 18, 22).

Prior to the wholesale discharge of the business agents Leu did not seek out any of them in order to ask them whether they would work under his administration nor did he seek out other officers of the Local to determine which agents would be willing to support his platforms (J.A. 10-11, 53). He summarily discharged these agents even though they had pledged their support to the Local

---

Footnote continued—

During the supervised rerun election, incumbent Harold D. Leu defeated Omar L. Brown by the narrow margin of 165 votes out of some 6,500 votes cast. Although the rerun election was supervised by the Secretary of Labor, the Brown slate supporters were financially impaired since many of his strongest supporters, the discharged business agents, were still unemployed (J.A. 54-61).

under his administration pursuant to Mr. Brown's request (J.A. 11-12). He was bitter because they had supported Omar Brown and had campaigned against him (J.A. 12, 26; H.D.L. 82-86).

Later as President, Leu undertook a course of action directed at denying the business agents employment within the jurisdiction of Local 20 and aimed at punishing them financially. His action ultimately resulted in many of them being denied many rights as members. Indeed several lost all membership rights and were forced to leave the local union in search of employment in other industries.[5]

Once terminated, most of the agents lost all their seniority, pension and health and welfare rights because they were unable to return to their employment within the Teamster industry (J.A. 28). Agents with as many as 18 years seniority, years of service as stewards, chief stewards and business agents, suddenly were not only out of work, but also were unable to participate any longer in union affairs (J.A. 54-61).

Of the agents who were able to obtain temporary employment within the Teamsters industry, Leu's bad faith in firing them soon became evident. Petitioner Bowman was hired by a trucking company but was terminated before he could complete his probationary period and replaced by an inexperienced employee because of pressure from the union hall (J.A. 54). Petitioner Haney's employment was also sporadic and he similarly was blackballed by the union hall. He suffered severe financial harm and had to file bankruptcy (J.A. 55-56). Plaintiff

---

5. These agents include Frank Howald, and Petitioners Stricklin and Eddington. See Frank Howald's Motion to Withdraw filed with the Court of Appeals on or about June 7, 1979.

Hubbard was also blackballed from completing his probationary period at Roadway Express Company (J.A. 57). Agent Starkey, fortunate to obtain employment, found that as an elected trustee his ability to participate in union affairs was extremely circumvented by the Leu administration. Leu took away his office at the union hall, held trustee meetings without notifying him, and otherwise denied him access to members (J.A. 60-61). In short the termination of the business agents was a very effective weapon of stifling dissent and opposition.

B. The Proceedings Below

Immediately after their termination, the business agents brought suit in Federal Court seeking preliminary injunctive relief to prohibit their unlawful discharge and the infringement upon their protected rights under the Landrum-Griffin Act. Count One of the Complaint alleged a violation and infringement of their equal rights and privileges to vote in the elections and to participate in deliberations of the local union protected by 29 U.S.C. §411(a)(1). Count Two was based on an infringement of their freedom of speech and assembly rights and was based on 29 U.S.C. §411(a)(2). And, Count Three alleged that the discharge of the Petitioners constituted discipline for exercising rights of free speech, assembly, voting and expression of views protected by 29 U.S.C. §411(a)(1) and (2) and contrary to 29 U.S.C. §529.

The District Judge, after hearing, issued a bench opinion essentially holding that the business agents were not protected by the aforementioned statutes since they were *appointed* officials rather than *elected* officials. Shortly thereafter the Respondents filed a Motion for Summary Judgment, supported by carefully selected excerpts

of depositions of the agents.[6] The District Judge again found that the Petitioners had not asserted a cause of action since they were *appointed* officials rather than *elected* officials, and not surprisingly again concluded that their rights as union members had not been affected.

The affidavits presented by the Petitioners sharply contradicted this finding and demonstrated that Leu's bad faith retaliatory firing was part of a scheme to blackball the agents from employment in order to deny them access to other Teamster members and to eventually force them into voluntary withdrawals from the union[7] (J.A. 54-60). Indeed the trial court refused to examine Leu's motives or whether the business agents' rights as union members had been affected by the termination and subsequent retaliation which had taken place. The Court stated,

> "In any event, this Court does not have a basis to expand the focus of this litigation to the question whether the union membership rights of the Plaintiffs had been violated. If these serious allegations can be established, they must be the substance of a separate action." Pet. App. A9

After the dismissal, the business agents sought an appeal to the United States Court of Appeals for the Sixth Circuit. The three judge panel for the Sixth Circuit affirmed the trial court's decision and held that the business agents had not alleged a valid cause of action

---

6. Since the agents were unemployed they couldn't afford to obtain copies of their lengthy depositions to oppose the respondents' motions, but several affidavits were filed in opposition. See J.A. 52, 54-61.

7. An involuntary withdrawal card is mandatory under the IBT Constitution after six (6) months of unemployment. See article XVIII, §5(a), Jt. Ex. 2., R. 27.

against the Respondents. Pet. App. A1-A3. The panel never addresed the factual issues in dispute nor did it examine at length the Trial Court's decision but essentially adopted its findings and opinions. Pet. App. A1-A3.

SUMMARY OF ARGUMENT

The decisions below, if allowed to stand, will substantially erode the guarantees of the Labor-Management Reporting and Disclosure Act. By adopting the minority line of authority which permits discharges of appointed union officials and union employees and by refusing to extend the protection of Landrum-Griffin to the business agents in the present case, the Sixth Circuit ignored the policy of Congress in assuring democratic self-government within labor organizations. The overwhelming weight of authority finds retaliatory discharges to be unlawful whether viewed as discipline under §529 or an infringement under §412. These courts generally recognize that union members cannot be placed in the dilemma of choosing between their rights of free expression under §101(a)(1) and (2) of the LMRDA and their jobs since Congressional policy mandated by Landrum-Griffin would be frustrated.

The decisions relied upon by the Sixth Circuit are readily distinguishable with the exception of *Wambles v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America*, 488 F.2d 868 (5th Cir. 1974). The *Wambles* decision refuses to protect the officer-member or employee-member relationship and would find that the officer or employee relationship is not protected by Landrum-Griffin but only that the membership relationship is so protected. *Wambles* is based on several false assumptions including the assumption that courts should not interfere to protect the Landrum-Griffin safeguards

in order to insure union democracy or rights of appointed union officials. The very genesis of Landrum-Griffin demonstrates a clear Congressional policy that courts must intervene to protect such rights and the overwhelming weight of authority recommends intervention in order to eliminate dictatorial practices and safeguard officers' speech.

In the instant action, the retaliatory discharge of the business agents was motivated by Respondent Leu's ill will and bad faith resulting from a vigorous and heated political campaign. Petitioners submit that his bad faith was not only demonstrated by the discharges of the business agents as his first official act in office, but also by his subsequent action in attempting to blackball them from finding employment within the Teamster industry knowing that after a period of time they would be forced into withdrawal from the union. Assuming *arguendo* that only membership rights are protected by Landrum-Griffin, the facts in the instant case demonstrate that the discharges did indeed interfere with the business agents' rights as members since they no longer were able to participate as fully in union affairs as they lost their voice and vote on the Stewards' Council, the governing body of the local union. Indeed several business agents were financially forced to leave the union and the Teamster industry in search of employment elsewhere.

ARGUMENT

I. THE COURTS BELOW ERRED BY ADOPTING THE MINORITY LINE OF AUTHORITY AMONG A SPLIT IN THE CIRCUIT COURTS ON WHETHER UNION EMPLOYEES OR OFFICERS WHO ARE ALSO UNION MEMBERS HAVE A CAUSE OF ACTION UNDER THE LMRDA WHEN THEY ARE DISCHARGED IN RETALIATION FOR EXERCISING RIGHTS GUARANTEED THEM AS UNION MEMBERS.

A. The Law

As a result of evidence discovered in Congressional hearings that some labor organizations were engaging in acts of corruption, dictatorial practices and racketeering, Congress felt it necessary to take remedial action in the form of legislation to insure the processes of democratic self-government within labor organizations. The act which governs and controls the internal affairs of a labor organization is the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C.A. Section 401 *et seq.*, commonly known as the Landrum-Griffin Act.

Title 1 of the Act, known as the "Bill of Rights of Members of Labor Organizations", provides certain protection for members of labor organizations directly applicable here. Section 411(a)(1) and (2) provide as follows:

> "(a)(1) *Equal Rights*—Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate

in the deliberations, and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws."

"(2) *Freedom of speech and assembly*—Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings; *Provided*, that nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations."

Section 529 of the same Act provides additional safeguards for union members as follows:

"It shall be unlawful for any labor organization, or any officer, agent, shop steward, or other representative of a labor organization, or any employee thereof to fine, suspend, expel, or otherwise discipline any of its members for exercising any right to which he is entitled under the provisions of this chapter. The provisions of Section 412 of this title shall be applicable in the enforcement of this section.[8]

---

8. Section 412 is the jurisdictional grant and provides as follows:

"Any person whose rights secured by the provisions of this subchapter have been infringed by any violation of this sub-

(Continued on following page)

Simply stated, the business agents were fired for exercising their rights to vote in elections of officers of their choice, and for exercising their rights to meet and assemble with other members to express their views, arguments and opinions upon candidates in the 1977 officers' election for Teamsters Local 20. Their acts and conduct are and were protected by the provisions of §411(a)(1) and (2) of Landrum-Griffin.

In addition, it is the position of the Petitioners that §529 prohibits the Respondents from "otherwise disciplining" its members for exercising rights to which they are entitled under §411(a)(1) and (2). Thus their removal as business agents was such prohibited discipline.

Not surprisingly, the precise issues raised in this case have been faced by a number of Circuits. The overwhelming weight of authority holds that the actions engaged in by Respondent Leu by his wholesale firing of the business agents for their political support of Omar Brown is conduct prohibited by Landrum-Griffin. *Grand Lodge v. King*, 335 F.2d 340, 56 L.R.R.M. 2639 (9th Cir., 1959), *cert. denied*, 379 U.S. 920, 57 L.R.R.M. 2512 (1964); *Bradford v. Textile Workers*, 563 F.2d 1138, 96 L.R.R.M. 2690 (4th Cir., 1977); *Wood v. Dennis*, 489 F.2d 849, 84 L.R.R.M. 2662 (7th Cir., 1972), *cert. denied*, 415 U.S. 960, 85 L.R.R.M. 2530 (1974); *Gabauer v. Woodcock*, 520 F.2d 1084, 89 L.R.R.M. 2961 (8th Cir., 1975), *cert. denied*, 423 U.S. 1061 (1976); *Cooke v. Orange Belt District Council*, 529 F.2d 815, 91 L.R.R.M. 2349 (9th Cir., 1976); *Retail Clerks Union, Local 648 v. Re-*

Footnote continued—

chapter may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred or where the principal office of such labor organization is located."

tail Clerks International Association, 299 F. Supp. 1012, 70 L.R.R.M. 3366 (D.D.C. 1969); *DeCampli v. Greeley*, 293 F. Supp. 746, 69 L.R.R.M. 2786 (D.N.J. 1968); *George v. Bricklayers Union*, 255 F. Supp. 239, 62 L.R.R.M. 2478 (E.D. Wisc. 1966); *Price v. United Mine Workers*, 376 F. Supp. 1015, 86 L.R.R.M. 2577 (D.D.C. 1974), *aff'd without op.*, 515 F.2d 1018 (D.C. Cir., 1975), 90 L.R.R.M. 2844; *Alvino v. Bakery Workers Union*, 46 L.R.R.M. 2812 (D.D.C. 1960), approved in *Bakery & Confectionery Workers International Union v. Ratner*, 335 F.2d 691, 56 L.R.R.M. 2432 (D.C. Cir., 1964); *Lamb v. Miller*, 107 L.R.R.M. 3064 (D.C. Cir., 1981); *Maceira v. Pagan*, 649 F.2d 8 (1st Cir., 1981). For contra authorities *see Newman v. Local 1101, Communication Workers of America*, 570 F.2d 439 (2d Cir., 1978); *Wambles v. International Brotherhood of Teamsters, etc.*, 488 F.2d 888 (5th Cir., 1974); *Martire v. Laborers' Local Union* 1058, 410 F.2d 32 (3d Cir.), *cert. denied*, 396 U.S. 903 (1969).

B. The Majority Theory

There are two established theories which support the business agents' position in this case. First, the vast majority of cases which have dealt with the subject and which are noted above have held that the removal from a union position as a result of the expression of political views infringes upon rights protected by 29 U.S.C.A. §411 (a) (1) and (2) and thus to be fired for exercising those rights is a form of discipline prohibited by 29 U.S.C.A. §529. See *Grand Lodge v. King*, 56 L.R.R.M. at 2642; *Wood v. Dennis*, 84 L.R.R.M. at 2665-2666; *Gabauer v. Woodcock*, L.R.R.M. at 2965-2966; *Cooke v. Orange Belt District Council*, 91 L.R.R.M. at 2351-2352. *See also Lamb v. Miller*, 107 L.R.R.M. 3064 (D.C. Cir., 1981); *Maceira v. Pagan*, 649 F.2d 8 (1st Cir., 1981).

Additionally, even absent a finding by this Court that the removal from appointive union office for engaging in

political activity was "discipline" within the meaning of 29 U.S.C.A. §529, it is submitted that 29 U.S.C.A. §411 (a)(1) and (2) present an independent basis via 29 U.S.C.A. §412 to prevent retaliation by a local union or its officer, in any form, for engaging in acts of voting, free speech or assembly protected by the Act. *Salzhandler v. Caputo*, 52 L.R.R.M. 2910, 2911; *Miller v. Holden*, 535 F.2d 912, 95 L.R.R.M. 2152, 2155 (5th Cir., 1976).[9]

Perhaps the matter was most succinctly stated by Judge Gesell of the District Court of the District of Columbia when he said simply:

> "Union members cannot, under the terms of the Act, be placed in the predicament of choosing between the right of free expression under §101(a) [29 U.S.C.A. §411(a)] and their jobs. This fundamental concept of the goals and prohibitions of the LMRDA is supported by the decision[s] in this District .... (citations omitted)." *Retail Clerks Union Local 648 v. Retail Clerks International Association, supra*, at 70 L.R.R.M. 3371.

In short, the evidence below demonstrated that after a vigorous election campaign in which the business agents supported the opponent of Respondent Leu, they were summarily discharged in bad faith for engaging in the right to vote and the right to freely express their views on

---

9. The Fifth Circuit was one of those few circuits which held that removal from appointive office was not the kind of "discipline" contemplated by 29 U.S.C.A. §529. See, *Wambles v. International Brotherhood of Teamsters*, 488 F.2d 888 (5th Cir., 1974). The decision in *Miller v. Holden, supra*, undercut *Wambles* in two ways. First, *Holden* finds an independent cause of action for removal from union office in political retaliation in 29 U.S.C.A. §411(a)(1) and (2) through §412 regardless of the applicability of §529. In addition, *Wambles* is explicitly confined to its facts at 95 L.R.R.M. 2155.

The Third Circuit also rejects the majority view, *Sheridan v. United Brotherhood of Carpenters*, 306 F.2d 152, 50 L.R.R.M. 2637 (3d Cir., 1962). *But compare DeCampli v. Greeley, supra*, at 69 L.R.R.M. 2786, which distinguishes *Sheridan* and relies on *Grand Lodge v. King*.

union candidates for election; rights protected by the LMRDA (J.A. 11-12, 26, 54-61).

It has been clear since its inception that the LMRDA was *to be read broadly* to support the Congressional mandate of permitting union members to participate in the political affairs of their union without interference or retribution. See, *Wirtz v. Hotel Employees*, 391 U.S. 492, 68 L.R.R.M. 2305 (1968); *Wirtz v. Bottleblowers Assn.*, 389 U.S. 463, 67 L.R.R.M. 2129 (1968); *Calhoun v. Harvey*, 379 U.S. 134, 57 L.R.R.M. 2561 (1964); *Bakery & Confectionery Workers Intern'l U. v. Ratner*, 335 F.2d 691, 56 L.R.R.M. 2432 (D.C. Cir., 1964); *Kuebler v. Lithographers Local 24-P*, 473 F.2d 359, 82 L.R.R.M. 2717 (6th Cir., 1973).

In the case at bar it is not even necessary to take a broad view of the Act's proscriptions. Removal from office because of political expression whether viewed as "discipline" under §529 or an "infringement" under §412 is equally unlawful and clearly works to frustrate the Congressional policy mandated by the Act. There are clear lines of authority, supporting either proposition which, it is respectfully urged, this Court should follow.

C. The Minority Authority—Theory and Distinctions

The Courts below refused to protect Petitioners from the retaliatory discharge by Respondent Leu and followed a minority viewpoint permitting discharge of union officers and employees. This viewpoint uses a distinction between rights as union members and rights as a union officer or employee in upholding discharges in the latter cases. The Courts below relied upon *Martire v. Laborers' Local Union 1058*, 410 F.2d 32 (3d Cir.), *cert. denied*, 396 U.S. 903 (1969);[10] *Newman v. Local 1101, Communication Workers,*

---

10. The District Court relied on *Martire* but the Sixth Circuit did not.

570 F.2d 439 (2nd Cir., 1978); *Sheridan v. United Brotherhood of Carpenters*, 306 F.2d 152 (3d Cir., 1962); and *Wambles v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America*, 488 F.2d 888 (5th Cir., 1974). Three of the decisions are easily distinguishable and the fourth should not be followed.

In *Martire*, the business manager of the local union was suspended after a trial board's findings that Martire was guilty of *negligence* and *incompetence*. 410 F.2d at 34. The charge against Martire arose from the fact that members of the local union had been employed for some eighteen months on a project at a wage less than that fixed by the Collective Bargaining Agreement. *Id.* at 34. The trial court found and the Third Circuit held that,

> "The business manager of a local union may be disciplined for negligence and incompetence in the performance of his duties, and that such duties include responsibility for seeing that employers pay the required union wage to members of the union." *Id.* at 38.

Thus *Martire* did not deal with the summary discharge of union business agents for exercising their political rights during a union election. On the contrary, Martire was discharged for *negligence*, after an investigation and trial before a union body.

In *Newman*, the 2nd Circuit reversed the trial court for granting a preliminary injunction enjoining the Defendants from refusing to certify Newman and other Plaintiffs as job stewards because of the exercise of free speech. *Newman* is readily distinguishable because the Plaintiffs in that case, unlike the Petitioners

> ". . . had engaged in disruptive conduct which prevented the president of Local 1101 from engaging in

a discussion with members concerning CWA's preparation for its upcoming negotiation with Bell System representatives, scheduled to begin in February, 1977, regarding the terms of a new Collective Bargaining Agreement to replace the existing one, which would expire in August, 1977 . . .

"Newman vigorously opposed the Local's policy and program for bargaining and supported a militant approach, which would require the CWA to mobilize its membership for a strike to be called unless Bell agreed to a thirty-two hour week at forty hours pay or a no lay-off clause. Furthermore, Newman advocated the organization of monthly lunch hour rallies of workers at various Bell buildings over the five month period preceding expiration of the existing contract to mobilize union opposition to any management proposal that did not meet this, and other, minimum demands." 570 F.2d at 439.

Thus, allegedly Newman actively undertook a course of conduct designed to sabotage and subvert the union's relationship with employers and attempted to interfere with the administration's bargaining process. See also 570 F.2d 446-447. The Petitioners in the instant case did not engage in any disruptive conduct and on the contrary were summarily discharged after having pledged support for the newly elected president and his administration (J.A. 11-12).

Moreover the record in Newman was not clear that the purpose or the effect of decertifying Newman as a job steward was to discourage his exercise of free speech rights as a member. *Id.* at 448. Indeed, Newman's only monetary loss from decertification "bordered on the nominal—payment of $20.00 per union meeting to cover his

expenses for each of four such meetings held annually." *Id.* at 448.

Most of the Petitioners in the instant case have suffered serious financial harm not only because of the loss of employment but also due to Leu's subsequent attempt at blackballing them from the industry. Petitioner Haney had to file bankruptcy (J.A. 55-60). Several have been forced out of the Teamster industry in search of other employment and have lost all rights as union members. See n.5. In addition, many of the business agents lost as many as 18 years seniority, pension rights and other health and welfare benefits when they were terminated (J.A. 54-61).

Finally, it should be noted that the Second Circuit appears to have cut back and clarified its early decision in *Newman I* upon rehearing after remand. See *Newman v. Communication Workers*, 597 F.2d 833, 101 L.R.R.M. 2265 (1979).

Upon remand the trial court in *Newman II* concluded that:

> "Despite Newman's opposition to policies of the local's management, he had faithfully and effectively performed his duties as a job steward, explaining to members the leadership's position on policies with which he disagreed, supporting the local's fund raising and petition drives despite his own belief that they were not in the members' best interest, and carrying out any local policy or program he was directed to implement." 101 L.R.R.M. at 2266.

The trial court further found that:

> "Newman had not interrupted, much less disrupted, the December 1, 1976 Broad Street meeting of some

local members at which President Dempsey had presented the local's proposed policies for impending negotiations on their behalf with the employer."

Indeed the Second Circuit acknowledged that the trial court found that the local's purpose and the effect of the:

"Decertification of Newman was not to discipline him for failure to properly perform his duties as job steward but to stifle not only Newman but members generally from exercising their rights openly to criticize the local's management, to publish their views and to run for office." 101 L.R.R.M. at 2267.

Petitioners submit that this is precisely the effect that Respondent Leu's wholesale discharge of the Petitioners in the instant case was also designed to accomplish (J.A. 54-61). By discharging the business agents, the message to the 12,500 members of Teamsters Local 20 was made clear by the Respondents. Oppose, criticize, or campaign against them and the Respondents would take action not only to terminate your employment, but to prevent your reemployment and eventually terminate your membership within the Teamster union.

Sheridan is also distinguishable. First the decision represents the view of a single judge of the Third Circuit, Judge Kalodner. Judge Hasty concurred in the result upon a different ground and Judge McLaughlin dissented.

Moreover, Sheridan had been guilty of malfeasance in office as a business agent since he had put a man to work with less layoff time than another laid off member. Sheridan was tried for his misconduct and malfeasance in this regard. 306 F.2d at 154. Thus, in many respects *Sheridan* is essentially a malfeasance fact situation, similar to *Martire*.

Finally, and more importantly, what is easily significant and distinguishable about *Sheridan* is that *Sheridan* relies on the fact that the "overriding purpose of the Labor-Management Reporting and Disclosure Act was to insure members of unions the right to self-government and union democracy." 306 F.2d at 158. Thus, Judge Kalodner emphasized that the business agent had been removed from office by *vote of the membership of the union.* In the present case, however, the business agents (including two elected officers) were removed from office in retaliation for supporting Respondent Leu's opposition candidate, Omar Brown. This distinction was also recognized by the Seventh Circuit in *Wood v. Dennis,* 489 F.2d 849, 854.

The *Wambles* decision, relied on by the Sixth Circuit, is thus left standing alone. While not as readily distinguishable, even *Wambles* recognized that an appointed union official's loyalty should be to the union as an institution and not to the personal political desires of a particular candidate. The Fifth Circuit stated that:

> "Loyalty should be to the union and not to a personal fiefdom beyond the reach of the membership . . ." 488 F.2d 890.

Petitioners submit that the *Wambles* rationale should be rejected. The arguments in favor of the *Wambles* position are not persuasive, but on the contrary fallacious.[11]

D. The Fallacy of Wambles

In *Wambles* the Fifth Circuit stated that,

> "As a practical matter, the union president should be able to work with those who will cooperate with his programs and carry out his directives. It can be

---

11. The Fifth Circuit later undercut *Wambles in Miller v. Holden, supra.* See n. 9.

argued that an appointed office holder under the president who had opposed him in the election does not guarantee obstructionist policies while he serves in his position as an appointed union official and that before the appointed official be discharged for cause he would have to show an actual conflict of interest. This is a rather charitable view of persons recently involved in political conflict. A more realistic view would be that in a great majority of cases the friction generated in the election campaign would in fact seriously impede the successful candidate's implementation of his program approved by the membership electing him.

"To extend the protection of labor's "Bill of Rights" §101(a)(1) (29 U.S.C. §411(a)(1) and "Free Speech Rights", §101(a)(2), U.S.C. §411(a)(2) to such office holders would, in effect, give such office holders a lifetime job except on dismissal for cause. The elected officials necessarily rely on appointed officials to implement policies and plans presumably approved by the union membership in the election. To tie the president's hands, an elected official, by not allowing him to discharge without cause or for any reason those who must serve under him, would so restrict the elected officers in their discharge of their duties that elections could be meaningless.' " 488 F.2d 889-890.

Wambles is thus based in part upon an assumption that union officials appointed by the losing candidate will not support the policies and programs of the successful candidate and this alone is grounds for discharge. In the instant matter, however, the Petitioners and the remaining discharged business agents had all pledged their support to serve the administration under Harold Leu. They did this at the request of Omar Brown since they recognized their duty to the union as an institution (J.A. 11). While Peti-

tioners recognize that appointed officers or employees of the union may be discharged for "cause", Respondents cannot be permitted to extend "cause" to retaliation for exercising membership-officer or employee-member rights of political expression guaranteed by the Act. *Grand Lodge v. King, supra; Salzhandler v. Caputo,* 316 F.2d 445 (2nd Cir., 1963).

The *Wambles* assumption that appointed officials would be frozen in office for life is also without merit. Both appointed and elected officials can be removed for harmful conduct towards the labor organization as an institution or conduct that would interfere with the performance of the labor organization's legal or contractual obligations. This is clearly set out in the proviso to §411(a)(2). Furthermore, the labor organization has the right to subject such members' conduct to reasonable rules with respect to meetings and deliberations. 29 U.S.C. §411(a)(1). Neither Respondent Leu nor Respondent union has a legitimate interest in preventing internal dissent nor stopping insurgent candidates from running for office.

The *Wambles* court further assumed that the Landrum-Griffin rights of appointed union officials should be ignored otherwise, "the court [would be forced] into a thicket of subtleties and hypocrisies of charges in an effort to ascertain whether or not the charges were bona fide or merely a cloak for dismissal for other reasons." *Id.* at 890. This viewpoint is erroneous and must be rejected for it assumes that the democratic processes in union elections will proceed without the need for judicial interference. Without the courts to protect the Landrum-Griffin safeguards there would be no union democracy or rights of union members.

As noted earlier, the very genesis of Landrum-Griffin was because of clear evidence discovered in Congressional

hearings that some labor organizations were engaging in acts of corruption, dictatorial practices and racketeering. Courts must intervene to safeguard the rights of union members otherwise such rights would be rights of paper rather than practice. Judicial enforcement and intervention is necessary and for the most part has been followed by the majority authority and furthermore encouraged by the commentators.[12] Petitioners cannot overemphasize that the Congressional purpose behind the Act was to eliminate dictatorial practices in unions.

> "The provisions of the Act are manifest, its reach is extensive and the obligation of the Federal Courts to carry forward the sound underlying Congressional mandate is beyond dispute." *Retail Clerks Union, Local 648 v. Retail Clerks International Association*, 299 F. Supp. 1012, 1017, 70 L.R.R.M. 3366 (D.D.C. 1969).

Other courts have recognized that suppression of freedom of speech is not limited to non-interference with vocalization. "Rights of communication cannot be so restricted as to be meaningless, and it cannot be said that freedom of speech as a member is unimpaired when that which made his speech effective is removed for improper disciplinary reasons." *Wood v. Dennis* at 855. Petitioners submit that without protection of officer speech there wouldn't be effective criticism since the lower officers are usually the most articulate and in the best position to discover evidence of wrongdoing.

> "A business agent is just such a union official to whom the membership looks for guidance, be he elected or appointed and be he an officer or an employee. It is widely known that in many unions the business agent

---

12. See Summers, *Judicial Settlement of Internal Union Disputes*, BUFFALO LAW REVIEW, Volume 7 at 423.

is the most important administrative representative. To reduce him to silence through fear of disciplinary reprisal is tantamount to saying that the member who succeeds in becoming an official of the union forfeits membership rights guaranteed to him by the LMRDA. Certainly, Congress never contemplated the imposition of such a 'Hobson's choice'. A contrary construction would destroy a member's incentive to seek office, or other responsible position." *DeCampli v. Greeley*, 293 F. Supp. 746, 752 (D.N.J. 1968).

Moreover, those who hold responsible offices in a labor organization may well be in the best position effectively to challenge the incumbent group which, in the nature of things, seeks to be entrenched. Members holding these senior posts perhaps best understand the actions of a union hierarchy and marshall political support when situations arise that can only be properly resolved by the democratic process which the LMRDA guarantees.

"To withhold even partially the full rights of free expression from such members by allowing their superiors to discipline them in the name of policy or otherwise because they have unsuccessfully opposed those in authority would effectively weaken the idea of union democracy." *Retail Clerks Union, Local 648*, at 1021.

Furthermore, the right to engage in such intraunion political activity is guaranteed to union members by §101 (a) (1) and §101 (a) (2) of the Act. Nothing in the statutory language excludes members who are officers nor is there anything in the Act to distinguish between appointed officials and elected officials. As the court stated in *Grand Lodge v. King*, 335 F.2d 340, 344 (9th Cir., 1964):

". . . to exclude officer-members from their coverage would deny protection to those best equipped to keep

union government vigorously and effectively democratic. We therefore conclude that §101(a)(1) and (2) apply to officer-members such as Plaintiffs."

No compromise may be had with the fundamental requirement of union democracy guaranteed by the LMRDA. The majority authority recognizes this principle and has readily intervened to protect freedom of speech political rights of members, officers, and appointed union officials.[13] Consequently, reliance by the Courts below upon *Wambles* is erroneous since the *Wambles* rationale itself is erroneous. As the Second Circuit noted in *Newman II*,

"A fine line must be drawn between what might be termed insubordination on the one hand and freedom of speech on the other." 101 L.R.R.M. at 2267.

E. Leu's Bad Faith Motivation

In determining whether the Petitioners' Landrum-Griffin rights have been violated, several courts suggest that it is necessary to analyze Respondent Leu's motivation in light of conflicting evidence contrary to his assertions.

"(M)otivation is crucial for the policy and practice must be viewed in one light if it rests solely on considerations of sound union management principles and in quite a different light if it was part of their plan or program to thwart opposition and entrench (a union officer) and his immediate associates in office . . . where a union policy and practice is promulgated in order, among other things, to place obstacles in the way of effective union democracy and appears to have this effect . . . the court cannot give that policy any

13. See the cases supporting the majority position set forth in Sections I A & B.

recognition as it offends both equity and the provisions of the LMRDA (citations omitted) . . .

Thus defendants not only failed to establish the existence of an organization policy and practice but even if they had succeeded the policy and practice, *under the circumstances* cannot lawfully be implemented so as to remove unsuccessful candidates from *appointed office.*" *Retail Clerks Union Local 648 v. Retail Clerks International Association,* 70 L.R.R.M. 3366 at 3370. See also *Bradford v. Textile Workers, Local 1093,* 96 L.R.R.M. 2690 (4th Cir., 1977) and *Miller v. Holden,* 535 F.2d 912, 915.

At a hearing for preliminary relief, Respondent Leu testified that he discharged the Petitioners solely because of their political support for Omar L. Brown (J.A. 24). In addition, it was his "belief" that the Petitioners would not work under his administration (J.A. 26). Indeed Respondent Local 20 attached Respondent Leu's affidavit to their motion for summary judgment (J.A. 34).

In his affidavit Leu states that he "removed all [Petitioners] in the above-captioned matter from their appointed positions on January 3, 1978 as business agents for IBT Local 20 for the reasons that Petitioners *refused* to support (his) presidency and his programs"! The bad faith motive of Respondent Leu is brought into focus by *comparing* this affidavit with his testimony presented in his deposition (J.A. 53). The following is illustrative:

"Question: (By Mr. Bolotin) Prior to January 3, the date of discharge, did you ever seek out any of the named [Petitioners] and ask them whether they would work under your administration?

Answer: (By Mr. Leu) No.

Q: Did you ever seek out Danny Farbrother,[14] Jim Cassidy, Don Sarver, or Mary Jane Gill, and ask them whether, in your opinion, the named [Petitioners] would work under your administration?

A: No." (H.D.L. 103).

The following is also illustrative:

"Q: (By Mr. Bolotin) Did you seek out, once you won the election and were installed, did you seek out any of the business agents that you discharged; that is, the named [Petitioners] and ask them whether they would support your campaign, the platforms and so forth prior to your discharging them on January 3?

A: (By Mr. Leu) No.

Q: And, isn't it true that between the time you were installed and the time that they were discharged that the named [Petitioners] did not oppose any of your platforms, openly give speeches, or oppose your platforms?

A: To the best of my knowledge, I don't know.

Q: And you didn't consider that when you made your decision to replace them, correct?

A: That's correct." (H.D.L. 113; J.A. 53).

Thus on the one hand Respondent Leu stated in an affidavit that he removed the Petitioners from their appointed positions because "they refused to support his presidency and his programs." On the other hand, he states in his deposition as well as during the hearing for

---

14. Leu evidently did seek out some agents for he didn't fire Farbrother, Cassidy, Sarver and Gill possibly because they supported him in the first two election contests against Brown (R. 48-49, 54-55).

preliminary injunctive relief that he never asked them to stay in the first instance.

Leu was bitter because of the vigorous campaign and the campaign propaganda that referred to state court cases finding him guilty of misappropriation of money from the union during his first term in office as president (H.D.L. 82). It was precisely this bitterness that led to the retaliatory discharge of the Petitioners and to the subsequent blackballing of many of the business agents from employment within the Teamster industry (J.A. 54-61).

F. The Discharge of Petitioners Was Designed to Interfere With Their Rights As Members

In relying upon the 5th Circuit's decision in *Wambles*, the Courts below attempted to distinguish between the rights of Petitioners as employees and the rights of Petitioners as members. This distinction while recognized in *Wambles* should not only be accorded little weight, but cannot be followed herein because of factual disputes concerning whether Petitioners' rights as union members were affected, even assuming *arguendo* that the distinction should be made.

Teamsters Local 20 does not provide pursuant to its Bylaws for membership participation in the normal weekly and monthly affairs of the local union. Because of its size, over 12,500 members, the Bylaws of Teamsters Local 20 provide that the affairs of the local are presented to a Stewards' Council, a unique institution as far as union locals go, for deliberation and voting.

> "§1. There shall be a Stewards' Council. The Stewards' Council shall be composed of delegates who are the officers, shop stewards and full time *business agents* or representatives of Local 20. The Stewards'

Council, like the Congress of the United States, shall be the legislative assembly of the Local Union. As provided in Section 3 of this Article, the *Stewards' Council is the governing body of the Union* and as such imposes upon each and every delegate a serious responsibility which cannot be taken lightly. This responsibility includes the duty to attend meetings of the Stewards' Council, to participate actively in the discussions therein, and to report back the proceedings of each Stewards' Council to their unit or industry.

§2. Except as may be otherwise provided in this Constitution and Bylaws, the Stewards' Council acting upon the Executive Board's recommendation is authorized and empowered to manage, invest, expend, contribute, use and acquire Local Union funds and property in the pursuit and accomplishment of the objectives set forth in the Constitution of the International Union and these Bylaws. The Stewards' Council is hereby empowered, in addition to such other powers as are set forth herein or are conferred by law, to act upon the recommendations of the Executive Board to:

A. Borrow and loan, directly or indirectly, any monies for such purposes and with such security, if any, as it deems appropriate, and with such arrangement for repayment as it deems appropriate, all to the extent permitted by law.

B. Transact all business and to manage and direct the affairs of the Local Union between Stewards' Conventions except as may otherwise be herein provided.

C. Do all acts, whether or not expressly authorized herein, which the Stewards' Council may

deem necessary or proper for the protection of the property of the Local and for the benefit of the organization and members . . . .

§4. Voting on all problems or issues which come before the Stewards' Council shall be on the basis of one vote for each regular steward and only those stewards present shall be entitled to any voting power.

§5. All stewards must be members in good standing to perform any functions conferred upon them by this Constitution and Bylaws . . ." (Emphasis added) Local 20 Bylaws, Article V. Jt. Ex. 1.; R. 27.

Only stewards, officers and business agents have the right to participate and vote on matters brought to the floor of the Stewards' Council. For most unions, the transactions of the union are brought before monthly membership meetings wherein the *members* are provided with an opportunity for passing judgment and voting on said matters.

Prior to their appointment as business agents for Teamsters Local 20 all the Petitioners were elected stewards and had a voice and vote on the floor of the Stewards' Council (J.A. 54-61). Also as appointed business agents the Petitioners had a voice and vote on the matters brought before the Stewards' Council. Respondent Leu knew that by discharging the Petitioners as business agents almost all would be unable to return to their prior employment (J.A. 28). As unemployed Teamsters, the agents cannot be stewards for any particular barn or employer. Thus, most dissension and opposition was effectively eliminated (J.A. 54-61).

In addition, it is a factual dispute whether Respondent Leu discharged the agents as part of a scheme to blackball the agents from the Teamster industry by applying pressure on employers to prevent them from rehiring the Peti-

tioners within the industry. Pursuant to the International Constitution, if a Teamster member is not employed within the industry for six (6) months, he is issued a withdrawal card and loses all voice and vote on union matters.

> "§5(a) . . . When a member becomes unemployed in the jurisdiction of the Local Union, he *shall* be issued an honorable withdrawal card upon his request. If no request is made, such honorable withdrawal card may not be issued before the passage of two (2) complete months after the month in which the member first becomes unemployed. An honorable withdrawal card *must be issued no later* than six (6) months after the month in which the member first becomes unemployed, if he is still unemployed at that time . . . ." IBT Constitution, Article XVIII, §5(a). Jt. Ex. 2; R. 27.

Indeed, Petitioners Stricklin, Howald and Eddington were forced into finding employment outside of the industry and have lost all membership rights of the local union. Agent Howald even withdrew from the appeal.[15]

For the Petitioners who were able to obtain re-employment within the industry, their participation in union affairs has been suppressed by Respondent Leu and his followers. Members who are not stewards are no longer permitted to attend Stewards' Council meetings held monthly in the Steinberg Auditorium. Instead, members have been forced into another auditorium, the Beck Auditorium, where a speaker system is set up so that they can hear what is going on but cannot directly participate (J.A. 48, R.E. 58-59).[16]

---

15. See Motion and Entry to Withdraw filed with the Court on or about June 7, 1979.

16. R.E. refers to the deposition of Richard Eddington filed August 31, 1978.

Petitioner Finnegan is the only business agent who since his discharge had been re-employed and elected as a steward in a Teamster barn. However, whenever he attempts to speak on matters brought before the Stewards' Council, Harold Leu's business agents boo and shout him down and prevent him from exercising a free voice on union matters (J.A. 58-59).

Being an elected official for Teamsters Local 20, is of little significance if you are not employed as a business agent. Agent Starkey was elected as trustee. However, once discharged as a business agent, Respondent Leu took away his office at the union hall so that he no longer has the same access to the members (J.A. 60-61). Indeed, Harold Leu prevented Agent Starkey from attending Executive Board meetings by conveniently failing to notify him when the meetings are being held and thus has directly prevented him from exercising his duties as an elected union official by denying him his voice and vote on the Executive Board for Teamsters Local 20 (J.A. 60-61).

The message to the thousands of other Teamster members evidenced by the suffering of their former business agents, the Petitioners herein, is clear. Many members are afraid to talk to the Petitioners because they fear that if they ever have a grievance they will have to rely on the union hall for support in order to win same (R.E. 69).

Thus, when the minority rationale is applied to the uniqueness of Local 20 and to the facts in the instant case, the discharge of the Petitioners from their *appointed* positions cannot be justified. The bad faith motive of Respondent Leu is evidenced by the wrongful discharge of the Petitioners and by his continuing campaign to deny them participation in union matters. Respondent Leu's bad faith motive is also demonstrated by his continued

attempts to starve the Petitioners into submission and to blackball them from the Teamster industry. Respondents' pattern of activity is a deliberate attempt to suppress dissent and a direct infringement upon Petitioners' rights under Landrum-Griffin. It is for this very reason that the majority of courts have found bad faith retaliatory discharges of *appointed* officials also to be unlawful. *Grand Lodge v. King*, 335 F.2d 340, 56 L.R.R.M. 2639 (9th Cir. 1959), *cert. denied*, 379 U.S. 920, 57 L.R.R.M. 2512 (1964); *Retail Clerks Union Local 648 v. Retail Clerks International Association, supra; George v. Bricklayers Union*, 255 F. Supp. 239 (E.D. Wisc. 1966); *Price v. United Mine Workers*, 376 F. Supp. 1015, 86 L.R.R.M. 2577 (D.D.C. 1974), *aff'd without opinion*, 515 F.2d 1918 (D.C. Cir., 1975), 90 L.R.R.M. 2844; *Alvino v. Bakery Workers Union*, 46 L.R.R.M. 2812 (D.D.C. 1910), approved in *Bakery & Confectionery Workers International Union v. Ratner*, 335 F.2d 691, 56 L.R.R.M. 2432 (D.C. Cir., 1964).

CONCLUSION

For the foregoing reasons, the judgment of the Court of Appeals and District Court should be reversed. Congress did not intend in adopting Landrum-Griffin that union members should be discharged for exercising rights in union elections just because they were appointed officials. To permit this would discourage union democracy for union members with years of experience and service would refuse to accept appointed positions and release their places of seniority with former employers. Moreover those members who did accept an appointed position would be placed upon the horns of a dilemma for no matter which candidate they elected to support, they would face the potential consequence of discharge upon that candidate's

defeat. Union democracy would not be fostered but on the contrary would only be impaired.

Respectfully submitted,

SAMUEL G. BOLOTIN
(Counsel of Record)
BOLOTIN & BOLOTIN CO., L.P.A.
2nd Floor Gardner Building
506 Madison Avenue
Toledo, Ohio 43604
(419) 241-1900
Counsel for Petitioners